

## INTRODUCTION

---

### **'Turtles Can Fly'<sup>1</sup>**

#### Vicarious Terror and the Child in South Asia

Bina D'Costa

Nearly 30 people came to our house. I recognised many of them as my neighbours. They beat my mother almost senseless. I begged them to stop. They dragged me outside. I resisted but they hit me with sticks. I screamed at my sister to save me but they beat her too. I cannot tell you what happened next.<sup>2</sup>

Post-election violence erupted in Bangladesh in late 2001, affecting minority communities living in the peripheries of the state.<sup>3</sup> On 8 October, 11 alleged perpetrators gang-raped Purnima, a 12 year-old girl. A judicial probe commission in its report nearly a decade later found that Purnima was one of 200 women and girls from the minority Hindu community who were allegedly gang-raped by the party activists of the then ruling Bangladesh Nationalist Party (BNP)-Jama'at-i-Islami alliance over a period of 15 months.<sup>4</sup> Purnima's experience is far from exceptional, of the horrific encounters that children are forced to bear in South Asia. From sporadic sectarian violence to protracted conflict situations, children in South Asia and in the world experience violence. These occur in a range of settings including at home and in the family, in schools and educational settings, in care and justice systems, in workplaces and in communities.

South Asia has encountered, and continues to encounter its fair share of conflict-related and natural disasters and complex emergencies. Internecine conflicts in Afghanistan and Sri Lanka, civil strife in Nepal, violent agitation in Bangladesh, and militarization practices in India and Pakistan have resulted in millions of marginalized and vulnerable children living in emergency conditions throughout the region. Over 40 per cent of South Asia's population are children under 18 years of age, which amounts to some half a billion children. Despite important progress, children are yet to be viewed as key stakeholders in South Asian initiatives on the rights and protection of the child.

Although published a decade earlier, this study captures the scale and intensity of the problem, that turned into a global problem by now. The United Nations Secretary-General's 'Study on Violence against Children' estimated in 2006 that every year between 41 and 88 million children in South Asia witness violence at home – the highest regional total in the world. Evidence also shows that half of the world's child brides live in South Asia and that around 44 million children are engaged in child labour in the region. Sexual abuse and exploitation, as well as child trafficking and corporal punishment are also major concerns for countries in South Asia.<sup>5</sup> According to General Comment No. 13 of the Committee on the Rights of the Child violence against children includes 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse' as listed in Article 19 Paragraph 1 of the Convention on the Rights of the Child (CRC).<sup>6</sup> The term violence has been chosen here to represent all forms of harm to children as listed in Article 19. However, other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight.<sup>7</sup> Violence is perpetuated by adults as well as by children's peers, including by people trusted by them, such as friends, community and family members. This chapter is about vicarious terror and children's experiences in the context of political violence. The effects of growing up in a difficult environment profoundly shape the life of a child. Actions of adults may directly lead to violence. Although depending on experiences, positions, locations children have varying responses, they almost inevitably feel powerless and marginalized in situations of violence.

There is a large body of literature on violence in South Asian societies. Das and Nandy, for example, attempt to assemble the structure of ideas within which to understand the movement from violence, as generative of society and culture, to the loss of signification in periods of anomie when violence cannot be contained within any structures of ideas.<sup>8</sup> The language by which order is created and communicated is easier to comprehend. Loss of signification cannot find a language within which it can be represented. South Asian films and literature have similarly addressed the deafening silence that has accompanied the trauma of being simultaneously the subject, object and instrument of violence.<sup>9</sup>

This collection suggests that the vast presence of the security sector has directly contributed to the ubiquitousness of political violence in South Asia. Consequently, it is important to mention the impact of militarism. The majority of research on militarism critically analyses three dimensions of the military's impact on society: the economic and social structure, the legal and political

system of the state and the attitude of citizens towards the ideology and values of the military.<sup>10</sup> These are primarily interrogated through two perspectives. Firstly, the Marxist approach argues that militarism is a problem specific to the social and economic structure of a capitalist society that requires external expansion and internal repression as integral to the development of capitalist mode of production and class system.<sup>11</sup> As such militarism is viewed as a tool of the ruling class, manipulated to serve their own interests. Rosa Luxemburg notes that ‘militarism has a specific function in the history of capital. It accompanies every historic phases of accumulation.’ She further writes,

the imperialist phase of accumulation [is a] phase of the global competition of capital [which] as the entire world as theatre. Here the methods employed are colonial policy, the system of international borrowing, the policy of spheres of interest and war. Violence, cheating and pillaging are openly employed, without any mask.<sup>12</sup>

Luxemburg argues that ‘political violence is also the instrument and vehicle of the economic process.’<sup>13</sup> Secondly, through an interrogation of legal and political systems, the liberal approach focuses on the functional relationship between the military and the civilian sectors of the state.<sup>14</sup> According to this theory, the popularity of military services, uniforms, insignia and songs are representative indicators of the extent to which militarism has taken root in the society. For liberals, militarism is also a product of the supremacy of state security forces over civilian state affairs. Militarization, in comparison to militarism, does not imply the formal supremacy of the military. It is a historical process that comprises a dynamic set of relationship between the society and the military. It is a multidimensional process through which a number of elements – such as military coups and regimes, authoritarian government, the dominance of patriarchy, powerful military and state apparatuses, war and armed conflict, rising military spending and arms imports, and external military intervention – become dynamically interlinked, both to each other and more widely to capital accumulation and projects of national and international hegemony.<sup>15</sup> The rising military expenditure of some of the South Asian countries – India, Bangladesh, Pakistan and Sri Lanka – has reflected the increased use of the military within state borders. These states have domestic high security zones of protracted conflict/‘post-conflict’ where communities live under state repression and continual denial of fundamental human rights and liberties. The heavy presence of the security sector and the

militarization of aid<sup>16</sup> for counterinsurgency purposes in Afghanistan, the presence of authoritarian regimes in Nepal and Bhutan and the military-led climate change and disaster relief programmes in the Maldives reveal that South Asian states have often preferred resolving political challenges through military means. With the presence of other state security forces such as the police, the intelligence agencies, the village defences forces and the paramilitary forces, militarization, in varying ways has become a deeply embedded process in South Asia. Empirical evidence from other parts of the world and also from South Asia indicates that militarization produces gross imbalance of power between communities and the state, and often human security is undermined and human rights suppressed, in the name of national security. Children, under such circumstances, experience the worst kind of violence.

This volume is based on the premise that children's diverse experiences during periods of conflict, post-conflict and peacetime reveal that their roles in society and in their political communities (such as ethnic, religious, linguistic and territorial) are complex. It explores both the common experiences and diverse aspects of childhood in South Asia. It asks questions about what initiatives are being implemented throughout the region to protect children from violence, militarism and exploitation. Finally, it critically analyses the tensions that exist within the global, regional and national advocacy discourses for children, with regard to the political processes and shifting dynamics of conflicting interests within and beyond South Asia.

This introductory chapter provides an overview of the wide-ranging scholarship on childhood with a special focus on children's rights, justice and advocacy. A key question that is explored in this chapter is how to move beyond the simple binary of children's passive role and their agency in South Asian politics. While it is adults who wage political violence, children's participation, recruitment, agency and resourcefulness in these experiences are also very complex.

This chapter offers an examination of how global norms and agendas influence the politics of childhood in South Asia.<sup>17</sup> It highlights, how understanding these roles also involves a critical analysis of where the child is situated within her/his family, socio-political networks and within the state. However, there exist significant tensions between universal and local approaches to childhood. The global, common language of the rights of the child, enshrined in the CRC implies that there is a shared acceptance of children's rights as a universally understood notion. Yet, as this chapter and subsequent contributions in the volume demonstrate, this is far from reality.

In the following section, this chapter explains that the development of international and national discourses on children's rights is relevant to children's specific rights in situations of political violence. Ideas regarding children's rights are culturally constructed and contested; they emerge from historical and social crises and are the product of particular power relations. This section reflects that a combination of legislative and regulatory frameworks and innovative advocacy measures coordinated between international, regional and the national levels are essential in ensuring the rights of the child.

### **Children as Rights Bearers? Global Norms and the Politics of Childhood**

Children's experiences during periods of political violence and 'peacetime' are diverse, reflecting their complex roles in society and in their political community.<sup>18</sup> Understanding these roles involves critical analysis of where the child is situated in relation to her/his family, social networks, and the state. There exist significant tensions between universal and local approaches to childhood. Whereas a global language implies that there is a shared acceptance of children's rights as a universally understood concept,<sup>19</sup> much of the scholarship on children's rights demonstrates that this is far from reality.

Some of the primary questions that have emerged from childhood studies concern the legitimacy of children as rights bearers; the biases of Western versus non-Western concepts of children's rights; and the context of universal versus cultural relativism, specifically as it concerns the impact of religion and the effect of children's rights in the global south.

Ratification of the United Nations CRC created new political opportunities for child rights activists in 1989. The CRC attempted to set aside the claims of cultural relativists by offering a global, shared understanding of the social and political identity of children, irrespective of culture, nationality, gender and race.<sup>20</sup> However, two critical challenges remain: the first is the divide in conceptualizations of childhood between the West versus the 'rest'. In 1993 an academic journal titled 'Childhood' first appeared, probing global perspectives on issues such as children's rights, agency, labour, and sexual exploitation. In her conceptualisation of an international social theory of childhood, Leena Alanen discussed the Anglo-centrism of the claims of the founding authors of the journal.<sup>21</sup> While Alanen wrote this more than a decade ago, one of the journal editors recently observed that a bulk of the contributions still derive

from the United Kingdom, Scandinavian states, the United States, Australia and South Africa, and remained concerned with the underlying essentialism of the dominant social theory of childhood.<sup>22</sup>

Related to this is the second challenge that emerges from disciplinary divides in theorizing children's lives: a number of approaches and forms of discourse raise critical questions with regard to children's rights, but also have biases and limitations. These include: the sociological approach to childhood; children's rights from a legal perspective; the anthropological understanding of cultural relativism; universalism, which extends beyond the realm of human rights and pervades legal discourse; and finally, politics and international relations, with their focus on actors and structural processes. Both multidisciplinary and interdisciplinary linkages are often overlooked by scholars, who for various reasons do not draw upon work from other fields, resulting in disciplinary silos and encouraging essentialist understandings of childhood and children's rights. The multidisciplinary debate within human rights discourse partly illustrates these tensions and complexities.

Jack Donnelly traces the history and idea of human rights in mainstream political theory to seventeenth century Europe when they served as a response to the social disruptions and transformations of modernity.<sup>23</sup> John Locke's *Second Treatise on Government* published in 1688 offered a natural rights theory of life, liberty and estate that is consistent with later developments in human rights.<sup>24</sup> The struggle for human rights in the following centuries gradually expanded to uniformly recognize all human beings as rights bearers. Human rights discourse today rejects the practice of employing different identities such as race, religion, gender, and property as grounds for exclusion of others for the enjoyment of rights. Classical Western liberal notions of human rights emphasize the individual's political and civil rights, whereas in many non-western traditions, economic and social rights and duties prioritize a community's or group's rights over an individual's rights. Economic and social rights and duties based on collectivist principles are also stressed by Marxist and Socialist ideas.<sup>25</sup>

In his influential work *'Universal Human Rights: In Theory and Practice'*, Jack Donnelly argues that rather than constituting an orthodox system of fundamental values, human rights 'are a set of social practices that regulate relations between, and help to constitute, citizens and states in "modern" societies.'<sup>26</sup> Donnelly suggests that the theory and practice of human rights was founded in the West and have become central to Western societies.<sup>27</sup> Unlike scholars who have argued that the idea of human rights existed in Islamic societies and other forms of traditional

communities, Donnelly contends that non-Western cultural and political traditions, such as those existing in pre-modern Western societies, lacked not only the practice of human rights but also the concepts underlying these traditions.<sup>28</sup> For him, specific cultural protections of moral and social rights might be worthy and protective of human dignity, but these do not constitute human rights.

The heated debates about what exactly culture is and how it shapes the concept of rights have been sharply divided along both disciplinary lines and global North-South relations.<sup>29</sup> In his reflection of why culture matters for development and for the reduction of poverty, anthropologist Arjun Appadurai argues that culture has often been perceived in relation to past habit, custom, heritage and tradition, whereas development is conceived as comprising future plans, hopes, goals and targets.<sup>30</sup> By providing a decentralized model of global cultural flows, Appadurai replaces the centre-periphery model in which the West dominates the 'rest'. He terms these global cultural flows as ethnoscaping, mediascaping, technoscapes, finanscaping, and ideoscapes.<sup>31</sup> The global diffusion of cultural forms and processes has also been examined by Ulf Hannerz through four frames: forms of life, whereby culture is shaped through everyday life; the state, by which culture is transmitted from the state to its citizens; the market, whereby culture is commodified through its passage from producer to consumer; and movements, through which people are converted to various forms of belief.<sup>32</sup>

As a political theorist Donnelly, criticizes the way anthropologists have understood culture and suggests that throughout the Cold War anthropologists have consistently failed to provide a sophisticated critique of the role of culture in human rights discourse. Appadurai, Donnelly and Hannerz began with comparable arguments pointing to the fluidity and inter-subjectivity of culture. The differences are clear, however, in the opposing arguments of universalism versus cultural relativism that divide scholars and practitioners alike in the politics of culture. The question remains, is it culture that is at issue?<sup>33</sup> Anthropologists opine that rather than culture, it is law – with its grounding in a positivist view of truth – that essentializes social categories and identities.<sup>34</sup>

Some scholars argue that employing a pluralist approach and negotiating rights in specific circumstances are more efficient ways to resolve these tensions. For example, anthropologist Ellen Messer argues that it is more useful to consider pluralist or evolutionary approaches to human rights. Tracing through four major sources of modern human rights – namely, Western political liberalism, Socialism and social welfare principles, cross-cultural rights traditions, and finally the UN instruments – she advocates a pluralist approach. Messer suggests that



anthropologists can help clarify notions of rights in culture-specific contexts through their analyses of concepts of 'personhood at multiple social levels' that leave certain categories of individuals without protections, and also by 'creating effective human rights educational materials that can link sentiment to human rights reasoning.'<sup>35</sup>

Research focussing on local levels, as seen in anthropological methodologies, provides greater scope to elucidate the notion of rights and duties, and to understand the construction of inclusion and exclusion from protection from the ground-up. Political theorist Brooke Ackery, for example, seeks to bridge the Universalist and Relativist debate by suggesting that universal human rights are immanent rather than transcendent, and that the foundation of universal human rights can be found in the contestation over these rights at the local level.<sup>36</sup> Disciplinary analyses and debates have primarily focused on how human rights are to be understood and the extent to which children's human rights concern cultural norms and beliefs. Outside academia, international actors are also divided in resolving some of the cultural contexts of human rights and children's rights.

The idea of children's rights movements, at least in the West, can be traced back to 1852, when an article was published with the title 'The Rights of Children',<sup>37</sup> and to Jean Vallès's 1879 novel *L'Enfant*.<sup>38</sup> However, instead of focusing on the child as an individual, Vallès and others during the nineteenth century were more concerned with 'saving' the child.<sup>39</sup> The focus on modern systems, orphanages and juvenile courts was associated with nurturing childhood instead of building self-determination.<sup>40</sup> It was not until the end of the nineteenth century that Kate Douglas Wiggin and Janusz Korsczak's writings expressed ideas that could be perceived as recognition of children as individuals with rights, choices and freedom.

In the three decades following the Second World War (WWII) and the reconstruction of Europe, anti-colonial and national movements in Africa, Latin America and Asia culminated in the rise of new states. In the face of enormous reparations and loan repayments in the aftermath of WWII, the former colonial powers could no longer afford to maintain their colonies.<sup>41</sup> As a result, new states emerged on the global stage through a haphazard demarcation of borders – for instance, in Pakistan, India, Burma, Congo – and the smokescreen of apparently peaceful transition from colonial to indigenous leadership based on divided loyalties and local power politics, as it occurred in Zimbabwe, Uganda, Sierra Leone, Sri Lanka, and Burma. By the 1980s, different kinds of conflicts were



brewing within and beyond these states. These were both intrastate and interstate conflicts, involving neocolonial and power-hungry rulers and interest groups who were equally repressive,<sup>42</sup> and who used the anachronistic colonial legislation to exploit the population. These conflicts were ruthless, enduring, protracted, and complex; they dangerously intensified political identities, such as those of ethnicity, race, language, religion and location. These conflicts also caused high numbers of civilian casualties, in which women and children were increasingly prominent.

Competing international debates about development, security and protection have influenced how children's rights in situations of armed conflict have developed. A paradoxical mistrust exists between the international donor community – the global patron – and the recipient states and institutions – the global client. While the former colonial rulers in Europe and the significant Cold War powers of the United States and the Soviet Union have fuelled many conflicts in the global South, human rights practitioners, advocacy networks, and activists of these states campaigned for the universal applicability of children's rights. The international donor community as global patron has formed various consortiums that fund their clients, which are either states or NGOs in the global South. But the profound mistrust generated within the local environment because of various interlinked factors – global politics following centuries of colonial rule; Cold War securitization; support of indigenous dictators; and the use of military technology, weapons and intelligence for domestic human rights violations – could not so easily be resolved by these new kinds of patron-client relationship.

Human rights constitute the primary discourse where differences and tensions between these two worlds have become apparent. When the global North raises the question of human rights, leaders and activists of the global South alike point to the continuing rights violations of the northern states. In addition to this, southern leaders such as Mahathir Mohammad of Malaysia and Lee Kuan Yew of Singapore advocated cultural relativism and Asian values over universality in the 1980s and 1990s. They further argued that the Universal Declaration of Human Rights celebrated individual rights over community rights. In Asia, they argued that economic development and social rights are more important than civil and political rights. While the purpose of their stance was to justify existing repressive policies the question remains, to what extent has the language of human rights, especially when it deals with children, become a global and shared language? The answers can be especially opaque when different societies and cultures place different values on their children.<sup>43</sup>

Following almost a decade of negotiation, the new international legal instrument on children's rights, the CRC, was drafted in 1988. It was clear that some of the cross-cultural factors discussed above were critical in setting the norms expounded by the CRC. The draft Convention was adopted in its entirety following the Second Reading held between 28 November and 9 December 1988.

There were 22 separate meetings held, where government delegations, intergovernmental organizations and non-governmental organizations (NGOs) representing various parts of the world debated differences arising from cultural, regional, religious and socioeconomic perspectives.<sup>44</sup> There were five regional caucuses: the West was made up of Western Europe, the United States, Canada, Australia and New Zealand; the East comprised the former Soviet Union and Socialist Eastern Europe; Africa, Asia and Latin America. African nations were least represented at working group meetings. However, as David Johnson points out, lack of financial resources might have discouraged African representatives from participating at the meetings in Geneva.<sup>45</sup> If this was the case, the creation of new international norms such as the CRC was shaped from the outset by the dynamics of global inequality.

### **Witnesses, victims, targets and perpetrators**

If our women and children die as martyrs, your children will not escape. We will fight against you in such a style that you attack us and we will take revenge on innocents.<sup>46</sup>

It feels like my son died once again today. When I saw other children going to schools it reminded me of my son. I went to his room and helplessly sat in front of his school bags and school dress.<sup>47</sup>

Driving to school in the light of a quietly subdued rising sun. There's a kind of stillness in the air. It sounds like a million mothers saying a silent prayer as they drop their babies to school. Stay safe. Stay safe...<sup>48</sup>

In a video message, Umar Mansoor, of the Pakistani Taliban<sup>49</sup> claimed himself as the mastermind of the massacre of 132 children and nine staff at a school in Peshawar – the deadliest militant attack in Pakistan's history that took place on 16 December 2014. It is events like these that remind people of the continued vulnerability of children caught up in modern conflicts. Worldwide, minors under the age of five have one of the highest conflict-related mortality rates of any age group. The impact of war on children extends much further than those

killed as a direct result of violence. Many children exposed to violence suffer from physical deformities, preventable diseases, and trauma. They also experience serious posttraumatic stress: the everyday suffering of psychological disabilities, including memories of terror and behavioural problems. Children caught up in armed conflict are also much more likely to be malnourished.

In modern history, the inadequacies of legislative measures, the lack of sincere commitment of parties caught up in conflicts, and a failure to form a strong and unified regulatory regime capable of dealing with children's rights in armed conflicts are some of the major difficulties in protecting children. Simply sparing children in the context of armed conflict clearly falls far short of providing for their wellbeing and development. Under International Humanitarian Law (IHL) – a body of treaty law that regulates the conduct of hostilities<sup>50</sup> and the protection of victims during armed conflict<sup>51</sup> – specific measures can be taken to protect child civilians, and these are applicable to both international and non-international armed conflict. However, the deficiencies of international law in this area are compounded by the problem that under the laws of war, the definition of a 'child' has yet to be clarified.

The most significant IHL treaties are the Geneva Conventions drafted after the WWII and the two Additional Protocols adopted in 1977. In the international context, prior to 1949 there was no specific mention of the vulnerability of children in conflict. The experiences of WWII demonstrated the inadequacies of existing laws to protect children in conflict zones. A major impediment with most of the Convention provisions was the lack of a legal definition before 1949 of children as persons under 18 years of age. This was only accepted with the adoption of the CRC in 1989.

Although the majority of children affected by armed conflicts are child civilians caught up in the theatres of war, a disproportionate percentage of the international community's attention focuses on child soldiers. Even during the drafting of the CRC, stakeholders' considerations centred on the protection of child soldiers, most of whom are male. While the CRC Optional Protocols offer safeguards, legal theorists believe that the 'blinkered vision of the drafters of the Convention may have contributed to the weakening of standards in respect of child civilians.'<sup>52</sup>

Youth – defined by the UN as those aged between 15 and 24 years of age – are affected by armed conflict in a variety of different ways. While they can be 'formidable assets in innovation and creativity, able to promote equality and

justice in society',<sup>53</sup> they can also be perpetrators of violent crimes. Research demonstrates that children who witness violent crimes are most at risk of engaging in delinquent and violent behaviour in the future. Legal theorists in general agree that the development of an effective juvenile justice system is integral to law reform in post-conflict environments.<sup>54</sup> The UN has provided various kinds of policy advice and technical assistance to juvenile justice systems in Afghanistan, Cambodia, Ecuador, Haiti, Jordan, Lebanon, Libya and South Sudan.<sup>55</sup> However little has improved.

Despite massive international assistance, the juvenile justice system in Afghanistan, for example, remains in dire condition. The age of criminal responsibility in Afghanistan is 13.<sup>56</sup> Based on government data, in March 2012 a total of 891 juveniles – 818 boys and 73 girls – were in juvenile rehabilitation centres (JRCs) in Afghanistan. Of these children, only 119 had been sentenced. Another 152 were suspected and 620 accused of crimes.<sup>57</sup> Most of the children were arrested for 'moral' or 'ethical' crimes,<sup>58</sup> crimes against national security, and theft.<sup>59</sup> In addition to Afghanistan's obligations under the CRC, which it signed in 1994, recent national laws such as the Juvenile Code (2005) and the Law on Juvenile Rehabilitation and Correction Centres (2009) include provisions ensuring children's protection. Human rights groups have expressed concern that widespread physical and verbal abuse of children occurs at the time of arrest by the Afghan National Police.<sup>60</sup> Also, although Article 22 of the Afghan Juvenile Code and Article 5 of the Interim Criminal Procedure Code (ICPC) provide children the right to be represented and advised by a lawyer, in reality only a small minority of children are afforded one when appearing in court.

It has been reported that the juvenile correction centres frequently fall below internationally accepted standards. Overcrowding and lack of sanitation, the poor condition of cells, and the incarceration of children with adults are in breach of the CRC, which obliges a state to treat the child with humanity and to respect their dignity.<sup>61</sup> International observers have warned that competing concepts of justice in Afghanistan, such as those underlying the formal justice system and those embedded in the informal justice system and cultural and religious traditions enable the country to maintain a 'presumption of guilt throughout the criminal justice system and a different understanding about the function of detention and procedural protections.'<sup>62</sup> The experience of Afghanistan shows that in the absence of major shifts in cultural and traditional approaches towards dealing with juvenile justice, introducing international standards and regulations in national settings are simply not effective.<sup>63</sup>

## Girls in conflict zones

Why shouldn't I get justice? Why (because of me) my family has to live this sub human existence? What is their crime? Why can't they live in their own house? Why shouldn't those criminals receive their due punishment? My life has been ruined, but I want my family members to live in peace, and without fear. This is my appeal, this is what I want.<sup>64</sup>

Feminist scholars working on child protection have examined the inadequacies of many traditional academic disciplines in overlooking the issues of gender, identity politics, race, religion, caste and class. Feminist analyses have contributed to the understanding of sexual violence in armed conflict, women's roles in building peace, masculinities and violence, gender and national identity politics, and testimonies and memory.<sup>65</sup> However, not enough attention has been given to girls' special protection rights in conflict zones, either in Feminist international relations or in international law. It is arguable not only that girls encounter armed conflict in different ways than boys, but also that their experiences of marginalization and vulnerability are distinct from those experienced by women and boys.

An assessment of jurisdiction, law and evidence demonstrates the significant challenges that remain in prosecuting sexual and gender-based violence as international crime.<sup>66</sup> Pressure from Feminists around the world has led to some advances in building a legislative framework for prosecuting rape.<sup>67</sup> For example, in Bangladesh after the War of 1971, voices of Feminism and women's activism have been crucial in placing concerns of sexual violence on the political agenda.<sup>68</sup> However, it has also been noted that despite the building momentum behind such reform, the sentencing of individuals in South Asia has been inadequate. Moreover, the occurrence of derogatory comments about child victims made by judges illustrates that the enactment of progressive legislation can often be undermined by existing attitudes and assumptions.<sup>69</sup>

Some of the prejudices inherent in national laws, such as the divide between the private and public spheres – which usually denies protection against domestic abuse by national law – are also present in foundational international law, which considers the treatment of citizens as a private matter for each state.<sup>70</sup> As both a woman and a child, the two main international legal frameworks applicable to girls are the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) and the CRC. Although both guarantee limited protection, the conventions do not inclusively overlap and girls' risk falling

between the cracks of the age-neutral' provisions of CEDAW and the gender-neutral provisions of the CRC.<sup>71</sup> In the CEDAW, the term 'girls' is used only once in the entire Convention (Article 10).<sup>72</sup> Although Cohen considers the CRC a Feminist landmark, as the Convention treats boys and girls equally, for Nura Taefi the gender-neutral language of the CRC limits the articulation of their specific experiences.<sup>73</sup> However, Walsh fittingly observes that the failure to recognize and address girls' interests in practice does not mean that the legal framework of the CRC is inadequate, but it does indicate a failure to enforce the framework effectively.<sup>74</sup>

International norms and regulations explicitly prohibit rape and sexual abuse in situations of armed conflict. Article 77 of The First Additional Protocol to Geneva Conventions specifies that 'Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.'

The United Nations General Assembly (UNGA) adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict in 1979. Although not legally binding on the parties to a specific armed conflict, it illustrated the vulnerability of children in conflicts, especially in internal conflicts. However, the wars in Rwanda, the Balkan region, Sierra Leone, Sri Lanka and Burma/Myanmar show that various parties have violated this Declaration repeatedly.<sup>75</sup> It took many years for the international community to consider and investigate sexual crimes seriously. Four international criminal justice institutions, namely the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone (SCSL) and the International Criminal Court (ICC) played a key role in acknowledging that rape, forced marriage, sexual slavery and forced prostitution are war crimes, crimes against humanity, and, in some instances, acts of genocide.<sup>76</sup> The ground-breaking Akayesu Case heard before the ICTR was the first time that an international court recognized that rape constituted an act of genocide. The text of the Akayesu judgement made a discursive shift by naming both women and girls as victims of violence. The Tadić case heard before the ICTY was the first case in which a defendant was specifically charged with rape and sexual violence as crimes against humanity and war crimes.<sup>77</sup> Also, the Kunarac (Foča) case in the ICTY resulted in the first international conviction for rape, torture and enslavement of women and girls as crimes against humanity.<sup>78</sup>

All of the current trials before the ICC include charges of sexual crimes, and thus far 12 individuals have been charged with gender-related crimes.<sup>79</sup> The SCSL was the first international court to recognize forced marriage as a crime against humanity in the Revolutionary United Front (RUF) case. An estimated 60 per cent of girls involved in the armed conflict in Sierra Leone were ‘bush wives.’<sup>80</sup> While the term denotes ‘forced marriage’, scholars and human rights organizations note that more accurately the term refers to sexual and domestic slavery.<sup>81</sup> The experience of girls in the fighting forces were significantly different than those of boys who were recruited as soldiers. Scholars have observed that invariably the ‘bush wives’ seen in the war in Sierra Leone were not women but girls.<sup>82</sup>

Augustine Park reflects that the indictment of ‘forced marriage’ by the SCSL is significant as it condemns the bush-wife phenomenon – which is also carried out in many other countries – as a crime against humanity. It focuses on gender-specific crimes against humanity perpetrated within an armed group. As forced marriage is overwhelmingly perpetrated against girls, it also addresses the age-specific experience of girls in war zones.<sup>83</sup> However, legal precedents are not enough to oppose the marginalization and vulnerabilities of girls in much of the world.

The impunity of armed forces has been particularly prominent in South Asia. The protracted and intense use of force by the Bangladeshi armed forces in the conflict in the Chittagong Hill Tracts (CHT) has produced a culture of violence in the region against girls and women and created anxieties about religious and ethnic identity.<sup>84</sup> There were some reports in the 1980s of a secret memo circulating among the army officers encouraging them to marry indigenous minors and young women. Sexual torture against children, the most vulnerable and marginalized subjects has also been used in this region to generate terror and manipulate the indigenous population.

During the armed conflict in the CHT,<sup>85</sup> on 28 December 1990 three Chakma girls aged between 12–18 were allegedly gang raped by eight Village Defence Personnel (VDP) posted at number 10-sentry post. Their bodies were mutilated and killed along with a 10 year-old boy.<sup>86</sup> The public nature of the killing and the mutilation suggests that the incident was used to create terror by the state. Girls and young women recounted stories of rape, gang-rape, assaults committed in front of children and forced marriages. No legal action, however, was taken by the state to deal with these crimes. This culture of impunity still continues today. The capacity of girls to be involved in designing their own empowering activities is crucial in any effective justice approach.



Drawing from Keck and Sikkink's groundbreaking study of advocacy and activism, the following section explores the norm-setting and framing agenda for children's rights and protection in situations of political violence. This section seeks to identify some of the factors mobilizing global and local movements in responding to children's concerns in South Asia. It considers the initiatives used to protect children from abuse and exploitation, and the tensions that exist within advocacy<sup>87</sup> and activism for children, especially with regard to the political processes and shifting dynamics of conflicts and 'peacetime'.

### **Protecting Children: The Roles of the Global Civil Society**

The role of civil society in fostering child-responsive and child-sensitive mechanisms is widely recognized. While a number of experts have provided extensive analysis on the idea of civil society,<sup>88</sup> for the purposes of this chapter it is useful to turn to Mary Kaldor's categorization of the concept.

Historically the concept of civil society was described 'as a rule of law and a political community, a peaceful order based on implicit or explicit consent of individuals,'<sup>89</sup> and also as a zone of civility that is understood not only in terms of good behaviour and politeness of a society, but also as a state of affairs that reduce violence as an approach for organizing social relations. Kaldor proposes that there are five different views of civil society in general usage. She argues that the first historical version – *societas civilis* – could not be separated from the state classically defined as having a public monopoly of violence, but rather could be differentiated from non-civil societies – 'the state of nature or absolutist empires – and from war.'<sup>90</sup> In its second version, bourgeois society, civil society was a historical phenomenon associated with capitalism. For Hegel and Marx civil society in this sense was a ground of ethical life existing between the state and the family and distinct from the state. The other three types occur in contemporary usage, which Kaldor classifies as activist, neoliberal, and postmodern versions of civil society.

The activist perspective denotes active citizenship and the development of alignments beyond formal political circles; through political pressure it insists not only on containing state power, but also on its redistribution. According to this understanding of civil society, activists are more concerned with public affairs and public debates, and emphasize shared cosmopolitanism and political emancipation. The *laissez-faire* politics embedded in the neoliberal version of civil society refers to a non-profit, voluntary third sector that in addition to restraining state power also performs certain welfare and security functions

traditionally understood as the state's responsibility. The NGOs involved in the development, human rights and humanitarian sectors offer these additional functions. Departing from both activist and neoliberal views of universalism, Kaldor's final version of civil society – postmodern civil society – subscribes to one particular universal principle: tolerance. Postmodernists call attention to identity politics and multiple layers of interests based on national, religious and other forms of allegiance. As such, this form of civil society incorporates and emphasizes pluralism and networks – including religious and diaspora-based networks, and rights-based linkages.<sup>91</sup>

In Kaldor's theorization of global civil society, groups, networks and movements, both formal and informal, comprise mechanisms in which individuals negotiate social contracts or political bargains at a global level. These processes occur through interactions with the institutions of global governance. Kaldor defines such interactions as 'global politics'; that is, the domestication of the international beyond the realm of diplomacy, high-level meetings and military strategies to a realm of dialogue and public pressure.<sup>92</sup> Moving on from theoretical conceptualization to the practical challenges, the diverse cultural and intellectual settings of civil society – and its transformation through protracted and uneven processes of diffusion – have been raised in particular in development discourse. As the contributions from Keck, Sikkink, and Kaldor suggest, civil society encompasses a wide variety of actors, ranging across local and international, independent and quasi-governmental players, networks, movements, groups and individuals. But it is not only cultural and intellectual formations that structure civil society: conflict constitutes a significant means by which civil society's actions and identity develop.

It is now widely accepted that a number of international advocacy reports and conventions promoted by civil society groups and NGOs have significantly contributed to the advancement of children's rights in conflict zones. The 1996 Machel Report opened up the possibility of incorporating children's concerns in the UN agenda. The report used CRC and the Optional Protocols to argue that children need to be protected during and after armed conflicts. The UN Office of the Special Representative for Children and Armed Conflict, as discussed in Chapter 1, has also been active in conducting research, producing reports and initiating negotiations to halt the recruitment of child soldiers. This agenda-setting work resulted in the United Nations Security Council (UNSC) Resolution 1261 and 1314, both of which recognize the consequences of conflict on children. Resolution 1314 also advocates the demobilization and reintegration of child

solders, meeting special needs of former child soldiers, and the necessity of establishing special child-protection units. NGO activism in transnational networks and global campaigns has also successfully raised the profile of children's rights.

Over the past two decades the rising importance of NGOs has attracted considerable attention. Yet, scholarly opinion remains deeply divided over the extent to which they are able to act as a progressive force for political and social change. In the absence of greater efforts to conduct empirical research, especially in the developing world, these perspectives are likely to remain polarized. Although much work has been done on the ways in which NGOs interact with the state and multilateral organizations to bring about reform, current understanding of the diverse influences of NGO actors and their behaviour in practice remains limited. The comparative advantage of NGOs lies in their capacity to function effectively at the local level, and often at the margins of the state in social spaces that are not clearly defined. In doing so, they are critical to the implementation of global justice norms related to human rights, gender equity, and sustainable livelihoods. However, the strategies that are employed by local activists and, indeed, their interpretation of what global justice means in practice, differ widely according to local culture and political and socioeconomic context.

In the context of a higher degree of politicization and a less structured institutional setting, conflict societies are arguably said to generate a more intense mobilization of NGOs and other civil society actors. In conflict the role of civil society groups are recognizably different from those who work during peacetime. Marchetti and Tocci suggest that instead of calling these conflict actors 'civil society', it is useful to use the term 'conflict society'.<sup>93</sup> For them, conflict society comprises all local civic organizations within conflict contexts as well as those third countries, international, transnational and civic organizations that are involved in particular conflicts.<sup>94</sup> Using this definition, they emphasize that in conflict contexts, particularly in structural conflicts, both civil and non-civil groups are involved in the formation of civil society; this is useful in the author's analysis of children's involvement in advocacy movements and activist groups.

Similar to state and non-state armed groups, civil society has the potential to use children to advance its goals regardless of whether it is beneficial or detrimental to children's empowerment. Movements use children to advance their political goals. It has been argued that the images of children in extreme poverty used by international organizations such as World Vision, Save the Children, and UNICEF to attract contributions from people living in the global North generate a politics

of pity rather than establishing a productive understanding of children in conflict and beneficial relationships between those willing to help and those needing it.

NGOs and pro-child rights networks working in protracted conflicts, and actors involved in children's issues almost without exception advocate for peace as a necessary precondition for children's rights and protection. UN agencies and various other international humanitarian actors have made it abundantly clear that contemporary identity-based domestic armed conflicts abuse and consciously target children, leaving them physically scarred and psychologically traumatized. UNICEF, ICRC, Save the Children and Plan International have referred to the lack of accountability of those wielding military, economic and political power as the root cause of violence against children.<sup>95</sup>

International advocacy to resolve children's vulnerability in conflicts has adopted four specific approaches: publicly naming those who target children; establishing children's 'peace zones'; lobbying for a more rigorous normative framework; and establishing international alerts to ensure that states and non-state actors comply with existing humanitarian and human rights norms. The law and justice chapters in this volume discuss in detail the normative frameworks and international laws with which various agencies are involved. Below, this chapter considers the strategies of 'naming and shaming' and children as 'zones of peace'.

It is important to note that the strategy of naming and shaming through monitoring processes does not involve the direct participation of children. Although NGOs were first resented and viewed with suspicion by governments, an ad hoc working group on the CRC gradually emerged as a positive source representing NGOs at the UN level. At the international level, NGOs have become significant actors and norm-shapers. The experience of NGOs – especially child rights organizations at local levels – is crucial to ensuring the compliance of state and non-state actors during times of conflict.

The mainstreaming of children's concerns through the UN protection agenda for children affected by armed conflict (CAAC) has focused on four specific elements defining the specificities and the scope of application of its campaign. These are:

- systematic monitoring and reporting of grave violations against children as a basis for action to end the impunity of those committing abuses; mainstreaming of CAAC concerns into the policies, priorities, and programs of the entities and institutional processes of the UN and beyond; strategic advocacy, awareness

raising, and dissemination of CAAC norms and standards; recognition, support, and enhancement of local civil society actors, organisations, and networks who represent the front line protection and rehabilitation of CAAC.<sup>96</sup>

This programme emphasizes that a significant limitation in ensuring accountability and countering impunity is the silence and invisibility of children in international global advocacy discourse. The Security Council is therefore determined to list publicly the identity of perpetrators, their location and area of activity.<sup>97</sup> This is covered by Resolution 1261 (2001), and is applicable particularly to those who continue to recruit and use children as child soldiers. This practice has continued since 2002, and has brought some success in terms of compliance. These reports submitted by the major international NGOs reflect that in their advocacy strategies at the global level, NGOs either evaluate the state parties' performance with regard to the CRC or adopt an issue-specific approach.

In relation to Article 38, which bans the recruitment of children under the age of 15 in war and armed conflicts, Poulatova, for example, classifies NGO reporting on children's concerns into three groups.<sup>98</sup> Referring to these classifications, the following discussion provides concrete examples of how children are represented and their everyday lives documented in global lobbying.<sup>99</sup> The first category comprises NGOs that emphasize specific issues of the CRC instead of directly evaluating state parties' performance with regards to Article 38. The NGOs in this category generate pressure by reproducing case material on children's vulnerabilities. For example, the Global Initiatives to End All Corporal Punishment for Children refers in its reports to evidence of the prevalence of corporal punishment in private and public spaces such as the home, alternative care, and penal systems cases. Its main aim is to ban all forms of corporal punishment and provide support for public education programmes.

The NGOs in Poulatova's second category are concerned with the protection of children in armed conflicts. A transnational alliance of NGOs, the Coalition to Stop the Use of Child Soldiers, is an archetypical example in this category. This coalition is committed exclusively to ending the recruitment and use of child soldiers, whereas other NGOs that look at child soldiering conduct their advocacy on other aspects of child rights violations as well. In its 2011 submission, the Coalition brought attention to Southern Thailand and informal armed groups. It stated that unlike the armed opposition groups, which actively seek out and indoctrinate children in order to secure their participation in acts of armed

violence, the recruitment of boys to the ChorRorBor (Village Defence Volunteers) is not a formal policy. Instead it arises primarily from a lack of vigilance on the part of the Thai authorities and a lack of awareness at the village level of relevant government regulations and directives, or alternative, more appropriate options for young people.<sup>100</sup>

In the third category are those NGOs that advocate enforcement of all the CRC provisions. Poulatova observes that a majority of these NGOs refer to Article 22 on refugee children, and Article 39 on rehabilitative care, recovery and social integration of children, while a third of the NGOs in this category explicitly report on Article 38. However, NGOs are increasingly drawing attention to a broader range of CRC rights violations and use interviews with images of children to represent those violations.

The Arakan Project in its alternative report on Burma/Myanmar's country report has raised Article 2 (non-discrimination), Article 7 (registration, name, nationality, care), Article 24 (health and health services), and Article 28 (right to education). Similar to the Palestinian organization's report, it uses children's images and interviews to focus on country violations of the CRC. In Part II of this report – titled 'Rohingya Children in Their Own Words' – the NGO also includes interviews of five children, aged between nine and twelve. With regard to the interviews it is explained,

The Arakan Project met them while they were on a short visit to Bangladesh, but till these children are currently living and growing up in Northern Rakhine State, Myanmar. They were afraid that they or their family would face problems back home because they talked to us. For this reason, we have omitted their real names as well as the name of their village and we have not included their photographs.<sup>101</sup>

The five respondents were asked various questions about documentation of citizenship, restriction on movement, rights to basic needs, arrest and detention, forced labour, and about their future. The official report of the state had made no reference to the Muslim population of the Northern Rakhine State and ignored specific recommendations that were made by the Committee adopted on 30 June 2004 related to the concerns faced by the Muslim population

Do you understand the word 'stateless'? What does it mean to you?

Stateless, what is this? You say people who have no country are stateless. I have a country. My country is Burma (Anwar, 9 yrs).<sup>102</sup>

I don't know the word stateless. You say that someone who has no

country is stateless. Burma is my country. I am not stateless. I live in a country called Burma. If someone is born and brought up in a country then he belongs to that country. All people are born in some country and that is their country. Why should one be stateless? (Abdullah 11 yrs).<sup>103</sup>

... You say that stateless people are people without a country. What do stateless people look like? When I think about it, Magh<sup>104</sup> boys can travel without any travel document and they can go wherever they want to go but I can't do that. Maybe this is because the country belongs to them and does not belong to me. Is that why we face so many problems to visit people in a different village? Or maybe it is because Burma is only for Buddhists, not for Muslims. Does this mean that I am stateless? I don't understand this (Enayet 11 yrs).<sup>105</sup>

The report also provides insights on children's experiences of forced labour.

I must work to support my family. I first worked for a farmer and then I started working for myself as a fisherman in a shrimp farm and catching fish in the river. Sometimes I also collect firewood. I earn between 1,000 and 1,200 Kyat a day, sometimes more. I spent all that I earned for my brothers and sisters. For the farmer I used to work 12 to 14 hours a day. Now I work on average 8 to 10 hours a day fishing or collecting firewood... I also have to work at least once a week in the NaSaKa camp... sometimes twice a week. This NaSaKa camp is about 1.5 miles from my house (Rafique 12 yrs).<sup>106</sup>

Karim Ali (11 yrs) knew it would be tough but he took forced labour duties to help his family just before he turned 10 years of age.

Once I had to carry sand, bricks and gravel downhill and then again uphill, because the Army was building a house on top of that hill. Many people had to work for many months for this new building on the hill. The hill was very high and climbing it carrying a load was too difficult for me. I will never forget this all my life. I could hardly carry 5 bricks at a time to the top of that hill. I fell sick and got fever because this work was too hard and my whole body was painful.<sup>107</sup>

These examples illustrate that NGOs are not only being creative in their advocacy strategies by representing children's direct voices in high-level documentation, but also giving careful consideration to questions the ethics of their fieldwork methodology.



In the final section of this chapter, the author provides three examples of the role of the civil society actors and children's diverse experiences and activism in episodes of violence in South Asia. The first example of 'war babies' tells one how babies were removed from their parents for racist, genocidal motives; that is, to preserve the purity of the state and the sanctity of the family. In this way, the babies are politically objectified to curb or even eradicate their potential to become political subjects as children and adults. The second example of 'children as a zone of peace' illustrates children's agency in peace politics. The final example of children and young people in resistance movements explains how future generations are deeply affected by the culture of political violence. Many engage in protests, both peaceful and violent, and do not have faith in peace processes that are initiated by the state.

### **War Babies as Political Objects<sup>108</sup>**

Sexual violence perpetrated during conflict as a reproductive crime has received significant attention following the Balkan wars. Conceived in conflicts around the globe, children referred to as 'war babies' face stigma, discrimination and often infanticide.<sup>109</sup> Humanitarian NGOs have shown interest in integrating the children born of sexual violence during conflict into their communities in any post-conflict humanitarian efforts, migration policies or refugee settlement programmes. However, the role of states has been analysed in depth without much attention being given to its relationship with the family.

Feminists have discussed the family's role in gender oppression, inequality, and the prevalence of domestic violence. Concomitantly, Socialists have highlighted how the family has been used as an instrument 'in conjunction with the institution of private property, for the reproduction of structured socio-economic inequality.'<sup>110</sup> In normal circumstances there is a deep unwillingness by the state to exercise its authority in how a family should function. The family is a valuable social institution and in most societies there exists an implicit assumption that it is appropriate for parents and adult family members to exercise their rights in family life. The presence of a child often provides the family the legitimacy to function as part of society as a family unit. However, when the child's legitimacy is in question, especially in a conflict targeting the community, the inviolable, private structure of the family also breaks down.

As the example from South Asia below demonstrates, notions of honour and purity are crucial in constituting families and the nation through the control of the identity of children. Specifically, children born of fathers of the opposing culture

and religious faith – Muslim or Hindu – in the aftermath of India's Partition in 1947, and after the War of Independence of Bangladesh in 1971, were rejected because they were perceived as politicized objects. Civil society actors have assisted state schemes of social engineering through their active involvement in framing a particular kind of political identity, such as refugees, who are frequently regarded as undesirable and a threat to a nation's integrity and identity.

After Partition, children in India and Pakistan were destined to belong with their fathers, whereas in post-conflict Bangladesh abortion and international adoption sealed their futures. Carpenter points out that Feminist scholars often place exclusive importance on the violation of maternal rights in understanding the politics of children conceived in war, and argues that such complexities must instead be explained in terms of children's human rights discourse.<sup>111</sup> This is an important ideological shift that responds to the repeated aspiration of states to reformulate children's identities and citizenship claims in terms of political subjectivity. Civil society actors such as social workers, volunteers and, in Bangladesh's case, international agencies, have all been involved in state-sponsored nation-building projects. Through active support from civil society, the state has often controlled the legitimate space of upbringing for children regarded as 'illegitimate'. Separated from their mothers, their narratives have been ignored or erased.

The 1947 Partition of India sparked widespread riots, during which brutal mass killings occurred, and thousands of women and girls on both sides of the newly formed borders were subjected to rape, abduction, and forced marriage.<sup>112</sup> Children born of sexual violence during this period constituted a novel political subject for the two nations. Indian and Pakistani authorities used the term 'recovery operation' to describe the forced retrieval and return of abducted women and girls to their own communities, which, in turn, required the determination of their children's legal status. The Indian and Pakistani Governments entered an Inter-Dominion Agreement in November 1947 to recover abducted persons. Between December 1947 and December 1949, Rameshwari Nehru's Women's Section in India's Ministry of Relief and Rehabilitation recovered 6,000 women and girls from Pakistan and returned 12,000 from India. Most recoveries were made from East and West Punjab, followed by Jammu, Kashmir and Patiala. Approximately 30,000 Muslim and non-Muslim women and girls were recovered by both countries over an eight-year period. The total number of Muslim women recovered was significantly higher – 20,728 as against 9,032 non-Muslims. While most recoveries occurred between 1947 and 1952, women were being returned as late as 1956. In order to expedite the process, instead of relying on the military

both governments involved prominent women as social workers and a small number of agencies: civil society actors in India and Pakistan, such as female volunteers, social workers, and welfare associations, were given a primary role in the recovery operation.

Some of the close associates of Mahatma Gandhi, such as Mridula Sarabhai (Chief All India Organizer), Rameshwari Nehru (Honorary Advisor), Anis Kidwai, and Sushila Nayar also worked for the recovery operation of the Indian Government. While the Women's Section maintained overall responsibility for the operation, volunteers from the National Council of Women, the International Red Cross, and the Friends Service Unit were also involved. Urvasi Butalia, Ritu Menon, and Kamla Bhasin conducted groundbreaking historical research in this field, recording the Constituency Assembly Debates, in which members of the Indian parliament argued over the fate of the children. Their research highlights how the policymakers used religious identity as the primary criterion by which to determine where the children would belong. In an effort to restore moral order, the narratives of sexual violence prevalent during the Partition riots had to be reversed. This was achieved through redefinition of children's identity by implicitly acknowledging that the child belonged with the father, Hindu or Muslim, and should be left behind when women were being recovered from the 'enemy' community.

However, as far as the recovery operation was concerned, removing women without their children proved to be a difficult task. While leaders were actively delineating boundaries and dividing communities and territories, social workers faced the appalling problem of separating women and children like 'oranges and grapes.'<sup>113</sup> Communities regarded children born of rape as the visible instantiation of the impurity of their mothers, and as such saw these children as posing a serious threat to national identity. The Indian and Pakistani Governments had agreed that neither forced conversions nor forced marriages would be recognized by either country. It followed that children born of such unions would be illegitimate, and in legislation were defined as 'abducted persons' if they were born within the time-frame specified in the Act. The policymakers and the practitioners in India concluded that Hindu fathers should be allowed their right of guardianship, but that children born of Muslim fathers could not be accommodated in majority Hindu India.<sup>114</sup> The children, who were the living proof of rape, could neither be socially acknowledged nor legally sanctioned.<sup>115</sup> The extent of each state's anxiety regarding the recovery of women and concomitant renunciation of their children was limited to concern over the legitimacy of citizenship of a child born

of violence, and the intrinsic link of the identity of those children to the nation's notions of purity and honour.

Two decades after Partition, another brutal war resulted in East Pakistan seceding as the newly formed state of Bangladesh. In addition to mass killings, a large number of Bangladeshi women were subjected to sexual violence; the official figure is around 200,000. Official documents suggest that there were at least 25,000 cases of forced pregnancy in the aftermath of the War. Bangladeshi leaders entrusted social workers and medical practitioners with the primary responsibility of dealing with the raped women; as a result, International Planned Parenthood, the Red Cross, and the Catholic Church became involved in rehabilitation programmes. These organizations also became responsible for carrying out the task of dealing with pregnancies.

Two programmes thus began to occur simultaneously: that which allowed pregnant women to have abortions, and the programme for the adoption of war babies. From interviews with prominent social workers and medical practitioners directly involved with war babies, it is clear that while many of these social workers were genuinely committed to supporting the victims, there were occasions when decisions to terminate pregnancy or relinquish the baby for adoption were contrary to the women's own choices. In addition, there were instances in which the resolute preferences of young pregnant girls were ignored, with girls being considered too young to make mature decisions. Confusion over how to deal with war babies appears to have reached high levels of government. The-then Prime Minister of Bangladesh, Sheikh Mujibur Rahman, repeatedly referred to these birangona (valiant) women as his 'daughters', and asked the nation to welcome them back into their communities and families.<sup>116</sup> However, he also declared that 'none of the babies who carry the blood of the Pakistanis will be allowed to remain in Bangladesh.'<sup>117</sup> Nilima Ibrahim, a prominent social worker and Feminist author, recalls meeting Sheikh Mujibur in her book 'Ami Birangona Bolchi'. When questioned about the status of war babies, the Prime Minister responded, 'Please send away the children who do not have their father's identity. They should be raised as human beings with honour. Besides, I do not want to keep those [sic] polluted blood in this country.' Perhaps such statements aided the push for adoption.<sup>118</sup> In the South Asian context described above, the organizational, practical and tactical constraints of civil society groups combined with the state's ideals of sovereignty and political belonging to play a critical role in recasting the role of babies as political objects and children as political subjects.

### Children as Zones of Peace (CZOP)

Children's visibility is raised in both global and local advocacy by drawing attention to their multiple vulnerabilities and marginalization. However, this approach also includes initiatives to integrate children's voices into advocacy programmes, and from early 2000 in encouraging children's peace movements. In the early 1980s, Nils Thedin, then a delegate of Sweden to the Executive Board of UNICEF, lobbied for children's organizations to stress 'children as a conflict-free zone in human relations.'<sup>119</sup>

The protection of children from harm is enshrined in the last paragraph of the Machel Report, which urges the need to claim CZOP.<sup>120</sup> This was embraced enthusiastically by the UNICEF office in Colombo, Sri Lanka in early 2000. A study conducted by the Reflecting on the Peace Practice Project (RPP) in 2001 recorded that people felt that children's voices could influence the dominant attitudes regarding the conflict in Sri Lanka.<sup>121</sup> In the first phase, UNICEF Colombo initiated a series of consultations with a wide range of stakeholders from, for example, the Ministry of Defence, the Liberation Tigers of Tamil Eelam (LTTE), religious organizations, local and international non-governmental organizations (NGOs and INGOs), schools, and communities directly affected by the conflict. The agreement stipulated that CZOP would provide a positive advocacy function and bring attention to the effects of conflict on children. A loose coalition of interested agencies and individuals was formed as a result of this consultation process, with over 250 participants from civil society. Research conducted as a part of the project recorded that by 1998 an estimated 380,000 children were displaced – many of them repeatedly – and up to 250,000 remain displaced. Landmines and unexploded weapons created several civilian victims every month, the majority being children. It also noted that approximately 900,000 children living in the war zones experience a variety of problems, from reduced medical care to displacement, rape, and recruitment as soldiers.<sup>122</sup>

16 agencies working in Sri Lanka endorsed the CZOP initiative. However, the different mandates across the agencies constrained the extent to which CZOP could succeed. There were disagreements about CZOP's public stand as a group against the recruitment of child soldiers. These concerns also affected how Sri Lankans perceived the CZOP, and ultimately the initiative was not very effective: 'CZOP is not controversial enough; the concept is too obvious (we can all agree that children are important) and therefore easy to dismiss or ignore.'<sup>123</sup>

Practitioners have taken the phrase apart, pointing to the political and cultural inappropriateness of each of the words. For example, in the interviews given to

the RRP, some observers noted that even though children made choices to join military forces at times of conflict, they could not easily be separated from the family sphere. Adults continued to form a part of their world and to offer safety. Also, the term 'zone' was politically loaded. Earlier, UNESCO declared Jaffna as a 'zone of peace' that the LTTE dismissed since there was an implication that Jaffna could not be attacked. Some worried that the term 'zone of peace' could mean an anti-Tamil Eelam position. Others questioned whether children could constitute zones of peace; whether zones were geographical locations; and even whether adults should tell children they were zones of peace, particularly when they experiencing violence on a daily basis. The implicit message for children in this naming process could be that adults were out of touch with children's everyday realities. In addition, NGOs pointed out that challenging issues of class, caste, and minority identities must also be included in the broader definition of peace.

In Sri Lanka, the concept was understood as one that was owned by UNICEF, which limited its local purchase. CZOP in Sri Lanka did not emerge following a needs assessment of the country, but rather was an outcome of a report commissioned by the General Assembly of the UN. This example of an advocacy effort initiated by international organizations in a local context raises questions regarding the extent to which a concept with universal implication and applicability needs to be tailored to suit specific political and cultural settings, or even whether it is practically possible to do so. UNICEF's approach in Sri Lanka was careful not to offend the warring factions, including the government. While the strategy was to transform the attitude towards children, the top-heavy operational design of the CZOP as led by UNICEF was criticized as not being inclusive enough.

While children were present at the first stage of the CZOP in Sri Lanka, they were given no say in designing the protection mechanisms. The politics of the armed conflict in Sri Lanka also influenced the success of the CZOP programme and constrained children's ownership and participation to a minimal level. The staff at the UNICEF Colombo office believed that the ongoing conflict seriously undermined the traditional importance given to education, as schools were used for recruitment centres for both the LTTE and the paramilitary forces of the government. One of its initiatives was to sponsor theatre groups that allowed children to express themselves and motivated parents to send them to school. However, some parents were not satisfied with UNICEF's approach of encouraging children to take initiative and support each other to go to school,

believing that financial support for children was more important.<sup>124</sup> At this time, although children participated in theatre groups, it was adults – their families, the NGOs and the INGOs and other stakeholders – who were the primary beneficiaries of these programmes.

By 2005, a transformation was visible in the CZOP approach as children's voices began to be directly included as a result of increasing awareness of global and local norms and perspectives of integrating children's voices. For example, in 1998 the images of children were used to raise awareness of their vulnerabilities, whereas in 2005 there was a conscious shift to include children's thoughts in the promotion of peace.

The CZOP initiative carried out a nationwide survey of 1500 children between the ages of nine and 16, from different religions, ethnic groups and socioeconomic classes. A poll released in May that year revealed that if they were President, only three per cent of Sri Lankan children would be in favour of fighting a war.<sup>125</sup> Most children would instead prefer to promote peace and bridge political and ethnic differences. Children responding to the survey felt that if the armed conflict was resolved, the money otherwise spent on the war could be used to develop schools; help children from different ethnic groups coexist; allow children in the north and east to return to school; and rebuild schools destroyed by war. In addition to measuring children's attitudes towards war and peace in Sri Lanka, the poll aimed to take a vital first step in ensuring children a voice in the peace building process. The UNICEF representative in Sri Lanka was quoted by the press: 'Although child rights are now on the peace process agenda, children are not given the opportunity to effectively participate in the peace process, this Poll should act as a starting point to enable greater representation of children in peace building.'<sup>126</sup>

Sri Lanka's 26 years of protracted conflict ended after extremely violent battles in 2009. The UN estimates that 40,000 civilians died in the five months before the war formally ended in May 2009, when the LTTE surrendered. Other estimates suggest that a minimum of 70,000 died in these five months, while the Government of Sri Lanka claimed that the number was 10,000.<sup>127</sup> The government declared a No Fire Zone (NFZ) on 20 January 2009 on a thin strip of land estimated to be 35 square km in Mullaithivu, on Sri Lanka's northeastern coast.<sup>128</sup> During these five months the government violated international norms and systematically subjected these areas to aerial and artillery bombardment. On the other hand, the LTTE also committed war crimes by not allowing civilians to move out of the NFZ. Its fighters prevented civilians from leaving LTTE territory, and in the final



weeks shot those trying to flee to safety. It forcibly recruited children as young as 14 and used forced labour to build its defences.<sup>129</sup> While no age-disaggregated data exist for the last stage of the battle, all reports confirm that many children perished in 2009 despite remaining in the NFZ.

While CZOP is valuable for negotiation and even humanitarian intervention, the Sri Lankan example illustrates that international advocacy of CZOP has certain limitations. Lack of political will, violation of international and local norms, and labelling children as enemies and hostages could break down the gentle image of CZOP, which appears to be successful only at times when warring factions are willing to compromise. Educational programmes, however, are one of CZOP's more successful advocacy strategies. According to UNESCO, there are currently 67 million children not receiving schooling throughout the world, and over 40 per cent of them are in conflict-affected countries.<sup>130</sup> Representatives of Côte d'Ivoire, India, Liberia, Nepal, and South Sudan met in Nepal in May 2012 to work on the Schools as Zones of Peace (SZOP) programme.<sup>131</sup> Stressing that education is crucial to peace, this five-country initiative focused on the transition to peace by linking schools to the family and the community. The programme was also implemented in Nepal through collaboration between the government and local and global civil society actors.<sup>132</sup>

A very important outcome of CZOP has been the promotion of the role of children's in peace movements. While CZOP has targeted education and health programmes, the constant reference to children's role in peacebuilding has also allowed the programme to move beyond strategic interventions. However, as discussed below, it is not only CZOP that succeeded in effecting this change: a range of local and global advocacy strategies have promoted children's roles and responsibilities as peace activists.

### **'Peace is institutionalised occupation'<sup>133</sup>: Children and youth in resistance movements**

Children have the power to mobilize and lead their communities towards positive change. Children's activism also involves their voluntary participation in resistance movements and protests, some of which are violent in nature. Critics have claimed that media and education are responsible for motivating children to participate in demonstrations and resistance movements. Voluntary participation of children in protests receives impetus from a number of causal factors, among them children's perception of danger; their daily witnessing of the impunity enjoyed by government forces and rebel groups; and in-group loyalties. In the

Kashmir conflicts children have been involved in civil disobedience movements that at times have involved violent protests. The stone-pelting practices of various protest movements for many children and youth have been voluntary, while in the case of Kashmir, the Indian Government has maintained that foreign states, in particular Pakistan were responsible in instigating youth violence.

At this time, youth – many of whom joined the resistance movement voluntarily – were also involved in a range of community activities. As a result of the Indian state's siege, assaults, and restrictions on every sphere of Kashmiri life, many of them resorted to writing graffiti on walls as a way of political resistance. In their uprising against the Indian occupation of Kashmir, the youth initiated a programme of civil disobedience, pelting stones, rocks, bricks and petrol bombs. Cheap and accessible slingshots were effective in attracting international attention, as it emphasized the radically uneven level of resources available to the combatant parties, and the Indian Army's use of excessive force to curb public violence. The Indian Government has been particularly hard on stone-pelting youth in Jammu and Kashmir (J&K). In March 2011 the state government admitted that over 5,228 young protesters were arrested in 2010 in Kashmir, of which 4,900 were later released. In a press release in May the J&K Government revealed that over 1811 youth – against whom 230 cases were registered for 'involvement' in stone pelting during 2010 and 2011 unrest in Kashmir – had been granted amnesty under a scheme announced by the Chief Minister Omar Abdullah.<sup>134</sup> The Chief Minister made it clear that the amnesty would not extend to those who were involved in arson and damage to public and private property.

The Kashmir conflict speaks to what is perhaps the most explicit form of militarization of civilian lives and the most recognizable in South Asia. Although the scholarship on Kashmir is extensive and continues to grow, there has been precious little by way of critical interventions into the continuing militarization of children in Kashmir. The phenomenon of children participating in protests and political resistance movements in Kashmir has generally been viewed as a by-product of clashes between real conflict stakeholders such as the state, its security forces and the armed insurgents, much in the same way educated children and youth are perceived as collateral gains of a peaceful, democratic and functional political system. Explicit engagements with the intersections of childhood, militarism and everyday life illustrate that while there is an urgent need to recover experiences of children from rudimentary discourses of victimhood, their direct participation in organized political protests reveals complex workings of agency and children as political subjects.

A child's or a young adult's social, cultural and political identity is shaped by the world she or he is exposed to. In her groundbreaking work on children and the politics of culture, Sharon Stephens wrote:

the notion of children's culture is also important within less universalizing approaches to the study of young people as social actors in their own right, engaged in making sense of and recreating the social worlds they inherit. Children creatively live from inside complex mixtures of languages and social domains that are external to structures for many adults.<sup>135</sup>

Stephens suggests that through their experiences children know many things that adults are unaware of or unable to comprehend. For Palestinian and Kashmiri children, stone pelting and writing graffiti are rituals of resistance through which they make choices in their everyday lives and take back a modicum of control from the authorities. In both cases childhood is militarized, and the political framing of movements make children's role politicized as well. As these examples illustrate, the issue of children's activism in protest movements is complex and often impelled by how they perceive their state's actions. The Israel-Palestine and Kashmir conflicts also demonstrate that political movements have the potential to harden children's social and cultural identities, politicizing their actions and encouraging children to participate willingly in violent protest movements. Stephens states:

[t]he crucial task for researchers now... is to develop more powerful understandings of the role of the child in the structures of modernity, the historical processes by which these once localized Western constructions have been exported around the world and the global, political, economic, and cultural transformations that are currently rendering children so dangerous, contested, and pivotal in the formation of new sorts of social persons, groups, and institutions.<sup>136</sup>

The reflections from leading human rights advocates in the region, Parvez Imroz, Kishali Pinto-Jayawardena and Azra Nafees Yousafzai, in the final part of this volume reveal, that Stephen's words are relevant more than a decade later in this discussion of childhood: particular kinds of childhood are perceived as dangerous and contested, and hence undesirable.

South Asia is a region that is marked as much by its homogeneity as by its immense diversity. As such, this volume examines how the development of international and national discourses on children's rights and protection is

relevant to children's everyday lives in situations of political violence. The authors of different chapters put forward an argument that in South Asia childhood is culturally constructed and contested, that its diverse conceptualizations emerge from historical and social crises in the region and are the product of particular power relations. Throughout this volume, the authors also suggest that a combination of national legislative and regulatory frameworks and innovative advocacy measures might be the way forward in ensuring the rights of the child. Children's participation and agency in these processes and mechanisms are crucial.

The author read about Purnima in the newspapers after the post-election violence in 2001. The traumatizing account of her rape, her family's ordeal, and her appeal for justice recorded in Purnima's deposition affected her profoundly. In 2003, she went to the area where she lived. The author was unable to meet her but she met many other Purnimas whose stories have not made it to the media. They remain as part of a statistics, of sexual and gender-based violence perpetrated on girls and women to generate terror in minority communities. Children have a distinctive minority identity, their vulnerability means they need special protection. However, as the chapters in this collection reveal, in the name of protection, children's identity must not be depoliticized. The construction of the childhood as innocent must not make them silent victims and apolitical.

## Endnotes

- 1 The title is adopted from Iranian director Bahman Ghobadi's film about children in Kurdistan on the eve of the American invasion. Through its portrayal of the living conditions, social pressures, rape, humiliation, and banishment that children in Kurdistan were exposed to, the film is an extraordinary archive of the experiences of children in the midst of violence, in pain and in death. Young turtles emerge from their shells and dash to the safety of the sea. Approximately, 90 per cent of the baby turtles are eaten by the birds. The remaining 10 per cent that are able to return to the sea develop protective shells and carry on the cycle of life.
- 2 Purnima Rani, in her deposition before the Magistrate under section 164 of the CrPC. She named 15 people for their involvement in the incident.
- 3 Following the general elections on 1 October 2001, which were won by the Bangladesh Nationalist Party (BNP) and the Islamist Party Jama'at-i-Islami coalition, its supporters reportedly attacked Hindus because of their perceived support for the rival Awami League party during elections. For details see, Amnesty International, December 2001. AI Index: ASA 13/006/2001.
- 4 M. Rahman, '2001 Post-Polls Persecution', The Daily Star, 2 December 2011. Available at <http://archive.thedailystar.net/newDesign/news-details.php?nid=212567>, accessed on 5 February 2015.

- 5 United Nations Children's Fund (UNICEF), 'South Asia Initiative to End Violence against Children'. Available at [http://www.unicef.org/rosa/protection\\_7734.htm](http://www.unicef.org/rosa/protection_7734.htm), accessed on 5 February 2015.
- 6 UNICEF, 'Violence against Children in South Asia'. Available at [http://www.unicef.org/rosa/protection\\_7735.htm](http://www.unicef.org/rosa/protection_7735.htm), accessed on 5 February 2015.
- 7 Specific forms of violence manifestation include, but are not limited to, corporal punishment, child marriage, domestic violence, child trafficking, bullying, and physical fights.
- 8 Veena Das and Ashis Nandy, 'Violence, Victimhood and the Language of Silence', *Contributions to Indian Sociology* 19 (1985): 177–95.
- 9 See Elora Chowdhury and Syed Sami Raza's chapters in this volume for example.
- 10 Glenn Hook, *Militarisation and Demilitarisation in Contemporary Japan* (London: Routledge 1996).
- 11 Ibid.
- 12 Rosa Luxemburg, *The Accumulation of Capital* (London: Routledge and Kegan Paul Ltd, 1951).
- 13 Ibid.
- 14 Hook, *Militarisation and Demilitarisation in Contemporary Japan*.
- 15 Robin Luckham, 'The Military, Militarization and Democratization in Africa: A Survey of Literature and Issues', *African Studies Review* 37 (2) (1994): 13–75, 23–27.
- 16 The militarization of aid began with the US, whose commanders have millions of dollars to spend in the field. A group of aid agencies including Oxfam, Care and Afghanaid – all with long experience in Afghanistan – calculated \$1 billion spending on aid by the military for 2010. This is more than the Afghan Government's budget for health, education and agriculture combined. 'Quick Impact, Quick Collapse: The Dangers of Militarized Aid in Afghanistan'. The signatories to the report are: Action Aid, Afghanaid, Cooperative for Assistance and Relief Everywhere (CARE), Christian Aid, Concern Worldwide, Norwegian Refugee Council, Oxfam and Trocaire. Available at [http://www.afghanaid.org.uk/news.php/12/press\\_release\\_27.01.10\\_aid\\_agencies\\_sound\\_alarm\\_on\\_the\\_militarisation\\_of\\_aid\\_in\\_afghanistan\\_#sthash.STsAYSiX.dpuf](http://www.afghanaid.org.uk/news.php/12/press_release_27.01.10_aid_agencies_sound_alarm_on_the_militarisation_of_aid_in_afghanistan_#sthash.STsAYSiX.dpuf), accessed on 6 February 2015.
- 17 This is developed from my previous work in *Children and Global Conflict* (London: Cambridge University Press, 2015).
- 18 The scholarship on nation building and nationalism suggests that four predominant and interrelated political communities are important in the formation of identity politics and conflicts. These are ethnic, religious, territorial and racial communities. Bina D'Costa, *Nation building, Gender and War Crimes in South Asia* (London: Routledge, 2011): 27–30. See also also Angela McIntyre, 'Children as Conflict Stakeholders: Toward New Discourse on Young Combatants', in Charles W. Greenbaum, Philip Veerman and Naomi Bacon-Schnoor (eds.) *Protection of Children During Armed Political Conflict: A Multidisciplinary Perspective* (Oxford: Hart Publishing), 329–41, 332.
- 19 Adele Jones, 'Child Asylum Seekers and Refugees: Rights and Responsibilities', *Journal of Social Work* 1 (2001), 257.

- 20 Olga Nieuwenhuys, 'Keep Asking: Why Childhood? Why Children? Why Global?', *Childhood* 17 (3) (2010): 291–96.
- 21 Leena Alanen, 'Review Essay: Visions of a Social Theory of Childhood', *Childhood* 7 (1) (2001): 504.
- 22 Nieuwenhuys, 'Keep Asking: Why Childhood? Why Children? Why Global?', *Childhood* 294.
- 23 Jack Donnelly, 'The Social Construction of International Human Rights', in Tim Dunne and Nicholas J. Wheeler (eds.) *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999): 71–102, 82–83.
- 24 In spite of the universalism entrenched in natural rights, Locke's theory was developed for the 'protection of the rights of propertied European males' and excluded women, 'savages', servants and wage labourers as legitimate right bearers. It also failed to distinguish between adults and children, reflecting an implicit assumption that children, like women could not be legitimate right-bearers because of their dependency on men.
- 25 M. Glen, Johnson, 'Human Rights in Divergent Conceptual Settings – How Do Ideas Influence Policy Choices?', in David Louis Cingranelli (ed.) *Human Rights Theory and Measurement* (London: MacMillan Press, 1988).
- 26 Jack Donnelly, *Universal Human Rights: In Theory and Practice* (Ithaca: Cornell University Press, 2003), 61.
- 27 Ibid, 63.
- 28 Ibid, 71.
- 29 For critiques on this position see Abdullahi Ahmed An-Na'im, 'Problems and Prospects of Universal Cultural Legitimacy for Human Rights', in A. An-Na'im and F. Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives* (Washington DC: Brookings Institution, 1990), 331-367; William Twining, *Human Rights, Southern Voices* (Cambridge: Cambridge University Press, 2009).
- 30 Arjun Appadurai, 'The Capacity to Aspire: Culture and the Terms of Recognition', in Vijayendra Rao and Michael Walton (eds.) *Culture and Public Action* (Stanford: Stanford University Press, 2004). He also offers a critical self-reflection of his own discipline, anthropology by noting that 'the future remains a stranger to most anthropological models of culture'. Ibid, 2.
- 31 Ethnoscapes according to Appuddurai are 'landscape[s] of persons who constitute the shifting world in which we live; tourists, immigrants, refugees, exiles, guestworkers and other moving groups and persons constitute an essential feature of the world and appear to affect the politics of (and between) nations to a hitherto unprecedented degree.' Mediascapes involves 'the distribution of the electronic capabilities to produce and disseminate information,' and 'the images of the world created by these media.' Technoscapes refer to the 'global configuration... of technology, and of the fact that technology, both high and low, both mechanical and informational, now moves at high speeds across various kinds of previously impervious boundaries.' Finanscapes refer to the flows in 'currency markets, national stock exchanges, and commodity speculations.' Finally, Ideascapes 'are often directly political and frequently have to do with the ideologies of states and the counter-ideologies of movements explicitly oriented to capturing state power or a piece of it.' see Arjun Appadurai, 'Disjuncture and Difference in the Global Cultural Economy', in Mike Featherstone (ed.) *Global Culture* (London: Sage, 1990): 295–310.

- 32 Ulf Hannerz, *Transnational Connections: Culture, People, Places* (London: Routledge, 1996). See also Gordon Mathews, *Global Culture/Individual Identity: Searching for Home in the Cultural Supermarket* (New York: Routledge, 2000).
- 33 Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson (eds.), *Culture and Rights: Anthropological Perspectives* (Cambridge: Cambridge University Press, 2001), 6.
- 34 Ibid.
- 35 Ellen Messer, 'Pluralist Approaches to Human Rights', *The Journal of Anthropological Research* 53 (3) (1997), 309.
- 36 Brooke Ackerly, *Universal Human Rights in a World of Difference* (Cambridge: Cambridge University Press, 2008).
- 37 Michael D. Freeman, 'The Limits of Children's Rights', in Michael D. Freeman and Philip Veerman (eds.) *The Ideologies of Children's Rights* (Boston: Brill-Nijhoff, 1992).
- 38 Michael D. Freeman, 'Children as Persons', in Michael D. Freeman (ed.), *Children's Rights: A Comparative Perspective* (Aldershot: Dartmouth, 1993).
- 39 Early documentation of children's rights advocacy involving interventions by 'child savers' demonstrates that the historical experience of childhood in Europe and elsewhere has, in many cases, been brutal. In many cases children were abandoned, imprisoned with adults and were forced to work in factories. The factory reform movement in the United Kingdom (UK) received momentum when in 1815, Robert Owen, a Welsh social reformer, factory owner and one of the founders of the cooperative movement started an appeal for overworked factory children. Children as young as six years old were working in Lancashire towns from 13 to 14 and a half hours daily. The appeal focused on detrimental health conditions of children. For details see, Raymond G. Kirby and Albert E. Musson, *The Voices of the People: John Doherty, 1798-1854, Trade Unionist, Radical and Factory Reformer* (Manchester: Manchester University Press, 1975), 347–80.
- 40 For details see Freeman, 'The Limits of Children's Rights' and Freeman, 'Children as Persons'.
- 41 See various contributions to the postcolonial scholarship, Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture* (New York: Oxford University Press, 1992); Sanjay Seth, (ed.) *Postcolonial Theory and International Relations: A Critical Introduction* (London: Routledge, 2012); Sankaran Krishna, *Globalisation and Postcolonialism: Hegemony and Resistance in the Twenty-first Century* (Lanham: Rowman and Littlefield, 2009); Ashis Nandy, *The Intimate Enemy: Loss and Recovery of Self Under Colonialism* (Delhi: Oxford University Press, 1983). Also see, Gary Teeple, 'Chapter 2', *The Riddle of Human Rights* (ON: Garamond Press, 2004).
- 42 Ann Curthoys, 'Whose Home? Expulsion, Exodus, and Exile in White Australian Historical Mythology', *Journal of Australian Studies* 61 (1999), 1–19; Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge: Cambridge University Press, 2004). Also see, the excellent analysis of Lemkin's unpublished work in Dominik K. Schaller, 'Raphael Lemkin's view of European Colonial Rule in Africa: Between Condemnation and Admiration', *Journal of Genocide Research* 7 (4) (2005): 531–38.
- 43 Based on her fieldwork in Cambodia and Burma/Myanmar, Cecilia Jacob argues that both age and seniority constantly produce and reproduce social and gender orders. While these are not always fixed, even higher education and social and economic status of younger



- generation may not be considered as vital as the seniority of decision-makers in mediating local conflicts. Jacob suggests that children's security in Cambodia and Burma must be understood in this context of age hierarchy. See Cecilia Jacob, *Child Security in Asia: The Impact of Armed Conflict in Cambodia and Myanmar* (London: Routledge, 2014).
- 44 David Johnson, 'Cultural and Regional Pluralism in the Drafting of the UN Convention on the Rights of the Child' in Michael Freeman and Philip Veerman (eds.) *Ideologies of Children's Rights* (London: Springer).
- 45 Ibid, 97.
- 46 Umar Mansoor, *Pakistani Taliban Following the School Massacre in Peshawar*
- 47 One father's reaction after the Peshawar Army Public school reopened in January, 2015. Available at <http://www.euronews.com/2015/01/12/pakistan-tight-security-as-children-return-to-school-after-taliban-massacre/>, accessed on 5 February 2015.
- 48 Saima Jamil Ashraf, a parent in Karachi, 'Children Return to Taliban Massacre School in Pakistan', *The AFP*, 12 January 2015.
- 49 Maulana Sufi Muhammad founded Tehrik-e-Nifaz-e-Shariat-e-Muhammadi (TNSM; Movement for the Enforcement of Muhammadan Law) in 1992. He was in prison until 2008, during which Maulana Fazlullah, his son-in-law, became the leader, and later ordered the assassination of Malala Yousafzai in October 2012. Mufti Munir Shakir founded Lashker-e-Islam (LeI) in 2004, and Baitullah Mehsud united 13 different groups and formed the Tehrik-i-Taliban Pakistan (TTP), alternatively referred to as Pakistani Taliban in December 2007.
- 50 Armed hostility is broader than the customary definitions of armed conflicts and/or war. It includes any hostile act or attempted hostile act, if the severity rises to the level of an 'armed attack' or if it is intended to contribute to such acts. It is also relevant to note that the International Committee of the Red Cross (ICRC) proposes the following definitions, which reflect the strong prevailing legal opinion: 1. International armed conflicts exist whenever there is resort to armed force between two or more States. 2. Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising in the territory of a State (party to the Geneva Conventions). The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum level of organisation. ICRC Opinion Paper, 2008, available online at <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>, (accessed on 5 February 2015).
- 51 Françoise J. Hampson, 'Legal Protection Afforded to Children Under International Humanitarian Law', *Report for the Study on the Impact of Armed Conflict on Children*, (May 1996). Available online at [http://www.essex.ac.uk/armedcon/story\\_id/000578.html](http://www.essex.ac.uk/armedcon/story_id/000578.html), accessed on 5 February 2015.
- 52 Geraldine van Bueren, *The International Law on the Rights of the Child* (The Hague, Netherlands: Martinus Nijhoff Publishers, 1998), 341.
- 53 UN Document on Youth and Juvenile Justice. Available at <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>, accessed on 5 February 2015.
- 54 Claire Morris, 'Developing a Juvenile Justice System in Bosnia and Herzegovina: Rights, Diversion and Alternatives', *Youth Justice* 8 (3) (2008): 197–213.

- 55 The objectives of these assistance programmes include: youth crime prevention; diversion of children away from the juvenile justice system; ensuring that children's rights are protected throughout the criminal justice process; ensuring that deprivation of liberty is a measure of last resort and for the shortest period of time; improving conditions of detention; and improving the social reintegration of children in conflict with the law.
- 56 Juvenile Code, Article 5.1. Only 10 per cent children in Afghanistan are registered during birth and many lack the necessary ID cards to prove their age. Also, methods in order to establish age by the criminal justice agencies are not always accurate.
- 57 Ministry of Justice, 'Afghanistan, National Juvenile Count by Province According to Gender, including Crime Categories', published in March 2012. Available at [http://www.ipjj.org/fileadmin/data/documents/reports\\_monitoring\\_evaluation/JusticeStudio\\_AfghanistanChildJusticeBrief\\_2012\\_EN.pdf](http://www.ipjj.org/fileadmin/data/documents/reports_monitoring_evaluation/JusticeStudio_AfghanistanChildJusticeBrief_2012_EN.pdf), accessed on 5 February 2015.
- 58 These include running away, adultery or zina (sex outside marriage), pederasty (sex between an adult male and a child), kidnapping, accompaniment or prostitution. Kimberley M. Motley, 'An Assessment of Juvenile Justice in Afghanistan', (Geneva: Terre des homes, 2010). Available at [http://www.crin.org/docs/Tdh\\_Juvenile\\_justice\\_web.pdf](http://www.crin.org/docs/Tdh_Juvenile_justice_web.pdf), accessed on 5 February 2015. Most of these cases are perpetrated by adults on children and in reality are cases of sexual abuse.
- 59 International Juvenile Justice Observatory, 'Afghanistan: Child Justice Brief', (June 2012).
- 60 See the Afghanistan Independent Human Rights Commission (AIHRC) 2008 report for example. AIHRC and UNICEF, Justice for Children: The Situation of Children in Conflict with the Law (2008).
- 61 Nisrine Abiad and Farkhanda Zia Mansoor, 'Criminal Law and Rights of the Child in Afghanistan' in *Criminal Law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective* (London: British Institute of International and Comparative Law, 2010): 85–100, 94–95.
- 62 United National Assistance Mission in Afghanistan (UNAMA), 'Understanding and Combating Arbitrary Detention Practices in Afghanistan: A Call for Action, Vol. II', Human Rights, Kabul. Available at <http://www.unama.unmissions.org/Default.aspx?ctl=Details&tabid=12254&mid=15756&ItemID=31488>, accessed on 5 February 2015.
- 63 While this is beyond the scope of this chapter it should also be noted that child detainees held by the National Directorate of Security (NDS) Department 90/124 in the name of national security, use a variety of techniques amounted to torture. Following personal interviews with six children, UNAMA concluded the five of them were tortured during interrogation for purposes of obtaining confessions. One child reported that the interrogators squeezed his testicles, while another child reported threats of sexual assault. All of them claimed that they signed false confessions under duress. 'Treatment of Conflict-Related Detainees in Afghan Custody', United Nations Assistance Mission in Afghanistan (Kabul: UN OHCHR, October 2011), 21.
- 64 Purnima Rani, during her deposition in front of the Magistrate, Bangladesh.
- 65 Kelly Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Hague: Kluwer Law International, 1997); Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace: The International Legal Framework', *Third World Quarterly* 27 (5) (2006): 937–57.
- 66 Navanethem Pillay, 'Foreword', in Clare McGlynn and Vanessa E. Munro (eds.) *Rethinking Rape Law: International and Comparative Perspectives* (New York: Routledge, 2010), xiv.

- 67 The Akayesu case, for example, significantly expanded the international community's ability to prosecute gender-based war crimes. The jurisprudence it has provided has formed the starting point for review of rape laws elsewhere. See *Ibid*, xv.
- 68 D'Costa, 2011
- 69 See Bina D'Costa, *Marginalisation and Impunity: Violence against Indigenous Women and Girls in the Chittagong Hill Tracts* (Copenhagen and Dhaka: Chittagong Hill Tracts Commission [CHTC], IWGIA, and Bangladesh Indigenous Women's Network, 2014).
- 70 Alison Cole, 'International Criminal Law and Sexual Violence: An Overview', in Clare McGlynn and Vanessa E. Munro (eds.) *Rethinking Rape Law: International and Comparative Perspectives* (New York: Routledge, 2010), 46–50.
- 71 Annelotte Walsh, 'International Criminal Justice and the Girl Child' in Lisa Yarwood (ed.) *Women and Transitional Justice: The Experience of Women as Participants* (London: Routledge, 2013), 54–74, 56.
- 72 Walsh also reflects on Nura Taefi's argument that the Convention's reference to parent-child relations (Articles 5, 9, and 16) may contribute to a deepening division between girls and adult-women and a misperception that girls are equal rights holders. Nura Taefi, 'The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child', *The International Journal of Children's Rights* 17 (3) (2009): 356.
- 73 Cynthia Price Cohen, 'The United Nations Convention of the Rights of the Child: A Feminist Landmark', *William and Mary Journal of Women and the Law* 3 (1) (1997), 45 and Nura Taefi, 'The Synthesis of Age and Gender', 357.
- 74 Walsh, 'International Criminal Justice and the Girl', 57. For example, in the Afghan customary justice system, in cases of serious crimes such as murder, the jirga (tribal jury system) could recommend either revenge or the marriage of a girl from the family of the murdered to a relative of the victim. This customary practice is bad and the settlement is done in the name of punishing the whole family and community of the offender's family and community. Badal is also another form of dispute resolution where parties could settle by agreeing to give a girl in marriage as part of the settlement. Despite Afghanistan being a party to the CRC and both customs contravening the Afghan national laws these are still practiced widely.
- 75 For details, see Chapter 1 and Chapter 3 in this volume.
- 76 See for details Annelotte Walsh, 'International Criminal Justice and the Girl', 62–65. For an overview of the jurisprudence addressing sexual violence in international courts and hybrid tribunals see Bina D'Costa and Sara Hossain, 'Redress for Sexual Violence Before the International Crimes Tribunal in Bangladesh: Lessons from History and Hopes for the Future', *Criminal Law Forum* 21(2) (2010): 331–59.
- 77 *Prosecutor v Tadić*, ICTY, Case No. IT-94-1-A, (15 July 1999).
- 78 Dragoljub Kunarac is one of the eight individuals named in the first indictment, issued in June 1996, dealing with sexual offences. This significant indictment covers the brutal regime of gang-rape, torture and enslavement which Muslim women and girls of Foča and elsewhere were subjected to between April 1992 and February 1993 by Bosnian Serb soldiers, policemen and members of paramilitary groups, including some coming from Serbia and Montenegro. *Prosecutor v Kunarac* (Trial Judgement), ICTY, Case No. IT-96-23-T and IT-96-23/1-T, (22 February, 2001).

- 79 Walsh, 'International Criminal Justice and the Girl', 64.
- 80 Susan McKay and Dyan Mazurana, *Where Are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (Montreal: International Center for Human Rights and Democratic Development, 2004), 92.
- 81 Augustine S. J. Park, 'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone', *Social and Legal Studies* 15(3) (2006): 315–37.
- 82 See McKay and Mazurana, *Where Are the Girls?*, 93, and Park, 'Other Inhumane Acts', 316.
- 83 Park, 'Other Inhumane Acts', 328.
- 84 The forced marriage of indigenous girls and women to Bengalis in Bangladesh has been used a strategy to change the demography of the CHT. Victims reported that they were forced to convert to Islam.
- 85 Refer to Kabita Chakma and Glen Hill's chapter in this volume.
- 86 See D'Costa, *Marginalisation and Impunity*.
- 87 Duncan McDuaie-Ra analyses the role of the civil society in South Asia in detail.
- 88 For a variety of philosophical traditions and practical contexts in how the notion of civil society is invoked, see, Simone Chambers, and Will Kymlicka, (eds.), *Alternative Conceptions of Civil Society* (Princeton: Princeton University Press, 2002); Sudipta Kaviraj, and Sunil Khilnani (eds.) *Civil Society: History and Possibilities* (Cambridge: Cambridge University Press, 2001).
- 89 Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge: Polity, 2003), 7.
- 90 *Ibid*, p. 7
- 91 Kaldor, *Global Civil Society*, 7–12.
- 92 *Ibid*, 78–82.
- 93 Raffaele Marchetti and Nathalie Tocci, 'Conflict Society: Understanding the Role of Civil Society in Conflict', *Global Change, Peace and Security* 21(2) (2009): 201–17.
- 94 Marchetti and Tocci, 'Conflict Society', 206.
- 95 See for example, reports and press releases by agencies on child protection, such as 'Conflict creating unprecedented threats to children's lives', (12 June 2011) available at [http://www.unicef.org/media/media\\_69614.html](http://www.unicef.org/media/media_69614.html), accessed on 5 February 2015; 'Children affected by armed conflict and other situations of violence', (March 2011) available at <http://www.icrc.org/eng/resources/documents/publication/p4082.htm>, accessed on 5 February 2015; 'Childhood Under Fire: The Impact of Two Years Conflict in Syria', Save the Children, UK., (2013).
- 96 Tonderai W. Chikuhwa, 'The Evolution of the United Nations' Protection Agenda for Children', in Scott Gates and Simon Reich (eds.) *Child Soldiers in the Age of Fractured States* (Pittsburgh: University of Pittsburgh Press, 2009), 37–55, 39.
- 97 'Naming and Shaming', Office of the Special Representative of the Secretary-General for Children and Armed Conflict. Available at <http://childrenandarmedconflict.un.org/our-work/naming-and-shaming/>, accessed on 5 February 2015.
- 98 *Ibid*, 197–202.
- 99 See Anita Knudsen and Michelle Godwin's chapter in this volume.

- 100 Coalition to Stop the Use of Child Soldiers and Justice for Peace Foundation, *Preventing Children's Association with Village Defence Militias in Southern Thailand* (London & Bangkok: Justice for Peace Foundation, 2011), 1–2
- 101 'Submission to the Committee on the Rights of the Child: For the Examination of the Combined 3<sup>rd</sup> and 4<sup>th</sup> Periodic State Party Reports', The Arakan Project (January 2012), 13. Available at [http://www.crin.org/docs/Myanmar\\_AP\\_CRC%20Report%20UPDATED.pdf](http://www.crin.org/docs/Myanmar_AP_CRC%20Report%20UPDATED.pdf), accessed on 5 February 2015.
- 102 Ibid, 15.
- 103 Ibid, 19.
- 104 Pejorative term used to identify Rakhine Buddhists. Muslims on the other hand, are often called kala meaning dark skinned people.
- 105 Ibid, 24.
- 106 Ibid, 33.
- 107 Ibid, 37.
- 108 This part of the chapter primarily draws from D'Costa, Bina, *Nation building, Gender and War Crimes in South Asia* (London: Routledge, 2011).
- 109 R. Charli Carpenter, 'Women, Children and Other Vulnerable Groups: Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue', *International Studies Quarterly* 49 (2) (2005): 295.
- 110 David William Archard, *Children, Family and the State* (Hampshire: Ashgate, 2003), 67.
- 111 R. Charli Carpenter, 'Surfacing Children: Limitations of Genocidal Rape Discourse', *Human Rights Quarterly* 22 (2) (2000) 428–77 and R. Charli Carpenter, *Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond* (New York: Columbia University Press, 2010).
- 112 The official estimate of the number of abducted women was placed at 50,000 Muslim women in India and 33,000 Hindu and Sikh women in Pakistan.
- 113 Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (New Delhi: Kali for Women, 1998), 118.
- 114 As a result, not only women's sexuality but also their right to parenthood was violated by the state. Men, many of whom had actually committed the violence, were given the sole right to raise the children in Indian society, as fathers and legitimate guardians of the children. Menon and Bhasin, *Borders and Boundaries*.
- 115 Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India* (Oxford: Oxford University Press, 1995).
- 116 Bina D'Costa, *Nation building, Gender and War Crimes in South Asia* (London, New York: Routledge, 2011), 133.
- 117 Ibid.
- 118 In addition, through state-sponsored programmes, International Planned Parenthood and the International Abortion Research and Training Centre, local clinics helped women to carry out abortions. Clinics were set up with the support of the Bangladesh Central Organisation for Women's Rehabilitation in Dhaka and 17 outlying areas, to cope with unwanted pregnancies.

- 119 Varindra Tarzie Vittachi, *Between the Guns- Children as a Zone of Peace* (London: Hodder and Stoughton, 1993).
- 120 See Chapter 1.
- 121 Luc Zandvliet and Orion Kriegman, *Report: Reflecting on Peace Practice Project* (Uppsala: Life and Peace Institute, 2001), 5.
- 122 Ibid, 5–7.
- 123 Ibid, 14.
- 124 Ibid, 6.
- 125 'Sri Lankan Children Overwhelmingly Support Peace, Finds New Poll', CZOP Media Release. Available at [http://www.unicef.org/srilanka/activities\\_1677.htm](http://www.unicef.org/srilanka/activities_1677.htm), accessed on 5 February 2015.
- 126 For details see [http://www.unicef.org/srilanka/activities\\_1677.htm](http://www.unicef.org/srilanka/activities_1677.htm), accessed on 5 February 2015.
- 127 For details see [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf), accessed on 5 February 2015.
- 128 Following heavy shelling, the international organizations left the NFZ along with the Red Cross on 25 January. On 12 February, another NFZ was declared covering a 12 km coastal strip that was packed with 300,000 children, women and men. On 27 April, the government declared the third NFZ where an estimated 100,000 people were crammed together. The government claimed that there were 10,000 civilians and the military deliberately restricted emergency supplies to the area. For details see the report by the Expert Panel on Sri Lanka, 25 April 2011. Available at [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf), 8-14, accessed on 5 February 2015.
- 129 The Expert Panel on Sri Lanka, 25 April 2011.
- 130 See [http://www.unicef.org/infobycountry/nepal\\_62457.html?p=printme](http://www.unicef.org/infobycountry/nepal_62457.html?p=printme), accessed on 5 February 2015.
- 131 The strategies that the 40 participants discussed included community ownership; the use of art-based therapy in conflict-affected areas of Chhattisgarh, India; child-friendly teachers in Liberia; and involving students in building drinking water taps in South Sudan.
- 132 UNICEF in Nepal asserts that the SZOP initiative succeeded in ensuring that more than one million Nepali children in more than 4000 schools directly benefitted from schools being kept open at times of political unrest. See Ibid.
- 133 Comment from a Kashmiri youth to the author, interview taken in Srinagar, September, 2011.
- 134 See <http://www.greaterkashmir.com/news/2013/Mar/12/1800-stone-pelting-youth-granted-amnesty-govt-84.asp>, accessed on 5 February 2015.
- 135 Sharon Stephens, 'Introduction', in *Children and the Politics of Culture* (Princeton: Princeton University Press, 1995), 24.
- 136 Ibid, 13–14.